



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ERROL O'BRIEN,

Petitioner,

v.

12 Civ. 7564 (DAB)

10 Cr. 0981 (DAB)

ORDER

UNITED STATES OF AMERICA,

Respondent.

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DEBORAH A. BATTS, United States District Judge:

The Court has reviewed the Petitioner's Motion To Vacate His Sentence pursuant to 28 U.S.C. § 2255. As set forth in the Petitioner's moving papers, his Offense Level was 21 and his Criminal History Category was IV. The Guideline Range was 57 to 71 months on Count 1. Count 2 had a mandatory consecutive sentence of 24 months. The sentence imposed by the Court with this Criminal History Category and Offense Level was generous.

The Petitioner also claims that he was not offered the "Fast Track Program" that other Defendants in other parts of the country can be offered by the Government. The Fast Track Program is discretionary with the Government. The Defendant was sentenced on October 3, 2011. At that time, there was no Fast Track Program in the Southern District of New York. Subsequently, on March 5, 2012, the United States Attorney's Office for the Southern District of New York introduced a Fast Track Program. However, on several bases, the Petitioner would be ineligible, even if the policy were to be applied retroactively: "Defendants charged in multiple counts, of which only one is illegal reentry, are not

eligible for fast-track disposition." (United States Attorney's Office, Southern District of New York, Fast-Track Policy for Felony Illegal Reentry Offenses (Mar. 5, 2012), at 1.) Nor are defendants charged with prior drug offenses (the Petitioner was sentenced on September 28, 2000 to 36 months custody for possession with intent to distribute marijuana); since the Defendant had eight Criminal History points, he is also ineligible; since the Defendant was deported on April 22, 2002 for his marijuana possession offense, he was convicted January 27, 2006 for illegal reentry; finally, in that the Defendant was again deported on July 24, 2006 and again returned to this country, he is ineligible because he has two or more prior deportations. (See id. at 1-2.) Accordingly, the Petitioner's Motion To Vacate His Sentence pursuant to 28 U.S.C. § 2255 is DENIED.

SO ORDERED:



Deborah A. Batts

United States District Judge

Dated: October 24, 2012

New York, New York